

May 19, 2006

Ms. Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

RE: Investigation by the Department of Telecommunications and Energy into the Bay State Gas Company, Berkshire Gas Company, Blackstone Gas Company, Boston Edison Company, Boston Gas Company, Cambridge Electric Light Company, Colonial Gas Company, Commonwealth Electric Company, Essex Gas Company, Fitchburg Gas and Electric Light Company, Massachusetts Electric Company and Nantucket Electric Company, NSTAR Gas Company, New England Gas Company, and Western Massachusetts Electric Company, 2005 Service Quality Reports, filed pursuant to *Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies*, D.T.E. 99-84, (June 29, 2001), D.T.E. 06-12, 06-13, 06-14, 06-15, 06-16, 06-17, 06-18, 06-19, 06-20, 06-21, 06-22, 06-23, 06-24 and 06-25.

Dear Secretary Cottrell:

On May 1, 2006, the Department of Telecommunications and Energy ("Department") opened an investigation into the 2005 Service Quality Reports ("SQ Reports") filed by the Bay State Gas Company, Berkshire Gas Company, Blackstone Gas Company, Boston Edison Company, Boston Gas Company, Cambridge Electric Light Company, Colonial Gas Company, Commonwealth Electric Company, Essex Gas Company, Fitchburg Gas and Electric Light Company, Massachusetts Electric Company and Nantucket Electric Company, NSTAR Gas Company, New England Gas Company, and Western Massachusetts Electric Company (collectively, the "Companies") pursuant to *Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies*, D.T.E. 99-84 (June 29, 2001). The Department issued an Order of Notice requesting Comments on the Companies' SQ Reports. The Attorney General files this letter as his Comments.

Although the Department's notice states that it is commencing an investigation into the Companies' 2005 SQ Reports, the Department has not issued a procedural schedule or indicated any intent to conduct an evidentiary investigation into those SQ Reports. To date, the Department's investigations have consisted solely of soliciting comments from the general public and have not included any public or evidentiary hearings. The Electric Restructuring Act of 1997 requires the Department to oversee quality and reliability of service and to require that quality and reliability are the same as or better than levels that existed on November 1, 1997. If the Department's service quality standards are to have any meaningful effect and hold companies accountable for their service quality performance, the Department must ensure that the statistics used for comparison are accurate. The 2005 SQ Reports filed by the Companies contain only summary data, not a detailed review or analysis of compliance with performance measures. "Moreover, 220 C.M.R § 1.06(6)(f), which states that 'in any hearing held upon the Department's own motion or upon petition, the person being investigated or the petitioner, as the case may be, shall open or close,' places the burden of presenting a direct case upon [the utilities]." *Boston Edison Company*, D.T.E. 97-95, p. 6 (1998). Adjudicatory proceedings would permit the utilities to present a direct case supporting their filings and intervenors would have the opportunity to respond.

At a minimum, the Department should conduct an investigation that allows for intervention, discovery¹, and adjudicatory proceedings² to obtain underlying data, supporting documentation and an understanding of the conditions under which each company operated during the year. Only then can the Department determine whether a company presents statistics consistent with the Department's orders.³ The interests of the public require that all parties have a reasonable opportunity to present their evidence and arguments.

¹ Although the Department has recently issued discovery in these dockets, it has not set a procedural schedule or given other parties the opportunity to issue their own discovery.

² Evidentiary hearings would be conducted only to the extent deemed necessary by intervening parties following the close of discovery.

³ In each of the past three years, the Attorney General also asked the Department to permit intervention, discovery, and adjudicatory proceedings. The Utility Workers Union of America ("UWUA"), Locals, 273 and 369, also asked the Department to open a full investigation into service quality standards at Bay State Gas (*See Comments of UWUA, Local 273, D.T.E. 05-12 (April 20, 2005)*) and the four NSTAR Companies (*See Comments of UWUA, Local 369, D.T.E. 05-15, 17, 19 and 23 (April 26, 2005)*). The Department denied those requests. The Department issued final Orders in *2002 Service Quality Reports for Electric Distribution and Local Gas Distribution Companies*, D.T.E. 03-10 through D.T.E. 03-23, *2003 Service Quality Reports for Electric Distribution and Local Gas Distribution Companies*, D.T.E. 04-12 through D.T.E. 04-25, *2004 Service Quality Reports for Electric Distribution and Local Gas Distribution Companies*, D.T.E. 05-12 through D.T.E. 05-25 without holding any evidentiary hearings even though numerous parties urged the Department to conduct evidentiary hearings.

The Attorney General also made several recommendations to the Department in prior years' Comments, and more recently in Comments filed in Docket D.T.E. 04-116, on improving the service quality reporting process. The Department, to the detriment of the Commonwealth's utility consumers, has not responded to or otherwise implemented any of those recommendations.⁴ The Department's role in improving the Companies' quality of service for ratepayers is especially important in light of the changes in federal regulatory oversight in the Energy Policy Act of 2005 (Pub. L. No. 109-58, 119 Stat. 594 (2005)) and pending mergers that will affect millions of Massachusetts ratepayers.⁵

The Department should require utilities to strive for continuous improvement in their service quality. The utilities will implement these improvements only if the Department increases its oversight of the utilities' annual service quality reports and allows interested parties to be involved in this oversight process, including other parties having the opportunity to issue discovery and conduct cross examination of witnesses in evidentiary hearings.

The Attorney General again recommends that the Department:

1. Enhance the annual SQ reporting and review process by requiring affiliated companies to present disaggregated data to ensure that all companies are collecting data consistent with Department orders and that reporting is consistent across all companies;
2. Require a periodic independent audit of SQ data and data collection methods;
3. Require companies to provide a qualitative and quantitative analysis of annual results;
4. Require companies to file supporting documentation for each statistic, including data excluded or modified and the justifications for exclusions or modifications; and

⁴ The Department recently opened an investigation into Bay State Gas Company's compliance with service quality standards and staffing levels (Docket D.T.E. 06-31) after intervenors, including the Attorney General, discovered record evidence during Bay State's rate increase case supporting a thorough investigation of Bay State's service quality data. *See Bay State Gas Company*, D.T.E. 05-27 (2005).

⁵ On February 27, 2006, National Grid announced its intention to merge with KeySpan Energy Delivery. Both companies have subsidiaries, such as Massachusetts Electric Company and Boston Gas Company, with service territories in Massachusetts that provide gas and electric services to a significant number of Massachusetts customers.

5. For those companies with insufficient historic data to establish a target for any of the Department's service quality indices that have associated penalties, assess a "deficiency/inadequacy" penalty based on an allocation of the maximum penalty for each measure for which there is not adequate data to establish benchmarks relative to the total maximum penalty, or apply an earnings sharing mechanism, or require the companies to use the statewide average standard for the years without adequate data.

The Attorney General appreciates this opportunity to comment on the Companies' 2005 SQ Reports. Recent public safety incidents highlight the importance of adequate oversight over utility service quality to fulfill the promises made by the Electric Restructuring Act of 1997. The Attorney General offers his assistance in revising the current service quality reporting process to ensure that the Commonwealth's utility customers receive the highest quality level of service available.

Sincerely,

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cc: Jody Stiefel, Hearing Officer
Service List